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May 3, 2021

City of Upland  
Attn: Mr. Stephen Parker, Acting City Manager  
460 N .Euclid Avenue  
Upland, CA 91786

Re: Blanket Conflict Waiver - Representation of LAFCO of San Bernardino County

Dear Mr. Parker:

Best Best & Krieger, LLP ("BBK") serves The Local Agency Formation Commission for San Bernardino County ("LAFCO") as General Counsel and represents LAFCO on various matters. The matters for LAFCO include various out of area service agreements that may involve the City of Upland (the "City") from time to time. We understand that these out of area service agreements are generally routine, transactional and non-contentious (collectively, the "Service Agreement Matters"). As you know, BBK also represents the City as its City Attorney. It is possible that BBK may be advising both LAFCO and the City on the Service Agreement Matters.

Because the Service Agreement Matters are generally routine, transactional and non-contentious, we are requesting a blanket waiver from the City so that we do not need to request for the City's specific consent each time one of these types of matters arises. Accordingly, we must inform the City about our representation, discuss with the City the potential impact of our representation, and obtain the City's informed written consent.

## **RULES OF PROFESSIONAL CONDUCT**

Rule 1.7 of the California Rules of Professional Conduct provides in pertinent part:

- (a) A lawyer shall not, without informed written consent\* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
- (b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client if there is a



City of Upland  
May 3, 2021  
Page 2

significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person, or by the lawyer's own interests.

...

- (d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), ... and:
  - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  - (2) the representation is not prohibited by law; and
  - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

### **SCOPE OF REPRESENTATION & DISCLOSURES**

BBK will represent LAFCO regarding the Service Agreement Matters as its General Counsel. It is possible that BBK may also represent the City as its City Attorney on the Service Agreement Matters. As a result, the informed consent of the City and LAFCO is being sought. As mentioned above, it is possible that BBK may be representing both the City and LAFCO on the Service Agreement Matters. There is no actual conflict between the City and LAFCO on the Service Agreement Matters. However, if an actual conflict arises, such as a dispute or litigation between the City and LAFCO on a specific service agreement matter, BBK will not represent either client on that specific conflicting matter, but BBK will continue to represent the City and LAFCO, separately, on other unrelated matters.

As part of this consent, the City agrees that we may represent LAFCO in the Service Agreement Matters and on other various unrelated matters as its General Counsel while we concurrently represent the City as its City Attorney on the Service Agreement Matters and on other various unrelated matters.

Our representation of the City and LAFCO as described in this letter is not prohibited, but requires the City's consent. We do not believe our representation of LAFCO will impair our competency, diligence or loyalty to the City nor will it otherwise materially limit our representation of the City or impair our independent professional judgment in any way. For example, we do not believe we will be tempted to favor the interests of one client over the other,



City of Upland  
May 3, 2021  
Page 3

nor do we think the relationship will create any appearance of impropriety. However, these are all things the City should consider before signing this waiver.

In the event that circumstances change or we become aware of new information that requires client consent or new notice, each client will be notified of that fact immediately, and continued representation will be subject to that notice and the informed written consent of each client will be obtained as necessary. Should an actual conflict of interest develop in the future or if the relationship should materially limit our representation of either client, we may be required to terminate our representation, which could impact the City's attorney's fees and costs should the City need to hire new counsel at that time.

### **THE CITY'S CONSENT**

If the City agrees to the above, we need an authorized representative of the City to sign this consent letter. This consent will not waive any protection that the City may have with regard to attorney-client communications with us in the City's matters. Those communications will remain confidential and will not be disclosed to any third party without the City's consent.

Please consider this matter carefully, and do not hesitate to contact us if the City has any questions or concerns. The City may wish to confer with independent legal counsel regarding this disclosure and the City's consent, and the City should feel free to do so.

The City's execution of this consent form will constitute an acknowledgment of full disclosure in compliance with the requirements of Rule 1.7 of the California Rules of Professional Conduct previously quoted in this letter, and the City's consent to proceeding with our representation of the City.

If the City has any questions, please do not hesitate to call.

Sincerely,

Stephen P. Deitsch  
of BEST BEST & KRIEGER LLP



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

City of Upland  
May 3, 2021  
Page 4

**CONSENT**

By this letter, Best Best & Krieger LLP has explained the existing and/or reasonably foreseeable potential risks and conflict(s) of interest in the above referenced matter, and has informed the City of the possible consequences of this representation and these conflicts. The City understands that it has the right to and has been encouraged to consult with independent counsel before signing this consent, and the City acknowledges that it has been given sufficient time to do so. Notwithstanding the foregoing, the City hereby consents to the above.

By: \_\_\_\_\_

Dated: 5/10/21